

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2001-531

June 21, 2002

BRADFORD SNOW, ET AL.  
Request for Commission Investigation into  
Central Maine Power Company's  
Abandonment of Demand-Side Energy  
Management ("DSM") Agreement with  
Cogenex Corporation

STIPULATION

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This Stipulation is submitted by the undersigned parties as a recommended disposition of all issues raised in this Docket.

**A. Procedural History.**

On August 1, 2001, the ten individuals listed on Exhibit A hereof, Cogenex Corporation ("Cogenex") and PSEG Energy Technologies ("PSEG ET") (collectively, the "Complainants") filed a Complaint with the Commission against Central Maine Power Company ("CMP") pursuant to 35-A MRSA Section 1302 alleging unjust and unreasonable acts and practices with regard to CMP's administration of demand side management ("DSM") agreements. Also included in the Complaint was an allegation that CMP had acted unreasonably in discontinuing payments to various DSM providers under contract to CMP as a result of a change in the energy acquisition and generation circumstances at the International Paper Mill in Bucksport, Maine (the "IP Bucksport Mill") that occurred late in 2000. The Complaint sought, among other things, a Commission order directing CMP to make retroactive and continuing payments under such contracts.

On August 13, CMP filed an Answer and Motion to Dismiss denying the substance of the Complaint and requesting that the Commission dismiss the Complaint for lack of jurisdiction. On the same date, CMP also filed a Complaint with the United States District Court for the District of Maine seeking declaratory relief (the "Federal Litigation").

On August 17, the Office of the Public Advocate ("OPA") filed a Petition to Intervene/Notice of Intervention in this Docket.

Following the submission of arguments and the issuance of a Staff Recommended Decision on the jurisdictional issue, the Complainants submitted an Offer of Proof, and CMP submitted a Response, regarding CMP's administration of DSM agreements, all as required under a procedural order issued by the Commission.

On April 5, 2002, during the pendency of this litigation, Public Law 2002, Ch. 624, entitled “An Act to Strengthen Energy Conservation” (hereinafter referred to as “Chapter 624”), became effective. Chapter 624 confers jurisdiction on the Commission to hear and resolve disputes arising under DSM agreements. Chapter 624 also amended prior law regarding the standards to be applied in interpreting DSM agreements in the post-electric-industry-restructuring environment.

The Parties to this Stipulation believe (1) that the enactment of Chapter 624 resolves the issues raised in this Docket and (2) that the Energy Management Projects located at the IP Bucksport Mill as currently described in the DSM agreements, as amended (and/or all related studies or analyses provided by, or on behalf of, the DSM providers to CMP regarding such projects) are in place and providing Energy Savings to CMP in accordance with the terms of the DSM agreements, 35-A M.R.S.A. § 3211(4) and Chapter 624.<sup>1</sup> Accordingly, the Parties submit this Stipulation with the intention that it be adopted by the Commission as a comprehensive disposition of all issues raised in this Docket.

#### **B. Parties.**

The Parties to this Stipulation are the Complainants, the OPA and CMP (the “Parties”).

#### **C. Stipulation.**

The Parties agree as follows.

1. Jurisdiction. The Complaint is properly before the Commission, and the Commission shall exercise its jurisdiction under 35-A MRSA Section 1302 and Chapter 624 to resolve all of the issues raised in the Complaint. Nothing stated herein shall limit the Commission in the exercise of its authority under Chapter 624 or other applicable law.
2. OPA Granted Intervenor Status. The OPA’s Petition to Intervene and Notice of Intervention is accepted and the OPA is made a Party to this Docket.
3. Allegations of Maladministration of DSM Agreements Withdrawn with Prejudice. Complainants withdraw their allegations to the effect that CMP has administered its DSM agreements in a manner inconsistent with the laws and policies of the State of Maine and of this Commission including, inter alia, the allegations made in the Complaint and in their Offer of Proof submitted on December 17, 2001. Such withdrawal is with prejudice to the Complainants and the OPA; therefore, Complainants and the OPA shall be barred from making any claim against CMP in any forum for any relief which claim is in any way predicated on allegations of

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<sup>1</sup> CMP notes that its agreement with statement (2) is subject to the satisfactory completion of all post-implementation audits contemplated in the Cogenex Settlement Agreement described in Section 4 hereof.

bad faith or improper administration of DSM agreements on CMP's part alleged to occur prior to the date hereof. In addition, CMP shall not be subject to any fines relating to, or in any way based upon, the withdrawn allegations, nor shall it be required to divest its DSM contract administration functions.

4. Resolution of IP Bucksport DSM Project Issues. CMP, Cogenex and IES Kilowatt Savings, Inc. ("IES") have arrived at settlement agreements regarding the DSM projects owned by Cogenex and an affiliate of Cogenex and IES and located at the Bucksport Mill. The Settlement Agreement between CMP, Cogenex, a DSM provider affiliate of Cogenex and PSEG ET is attached hereto as Exhibit B, and the Settlement Agreement between CMP and IES is attached hereto as Exhibit C. The Cogenex Settlement Agreement, inter alia, calls for (1) payments to Cogenex with interest thereon if approved by the Commission, retroactive to January 1, 2001 (the date on which CMP discontinued payments) for energy savings delivered between January 1, 2001 and May 31, 2002 from DSM projects located at the IP Bucksport Mill (the "Bucksport Projects"), and (2) for a resumption of payments for energy savings from the Bucksport Projects after the date of Commission acceptance of this Stipulation. The IES Settlement Agreement calls for the termination of all of IES' Power Partners Agreements in return for a single lump sum payment, together with a mutual general release.

The Parties agree that the Commission should find that

(1) the Settlement Agreements represent a reasonable resolution of all issues raised in the Complaint, in the Complainants' Offer of Proof, and in the Federal Litigation regarding energy savings from the Bucksport Projects;

(2) the payments which CMP will be required to make under the Settlement Agreements

(a) will be prudently incurred,

(b) will be reconcilable in CMP's rates in the same manner as all other payments made pursuant to Power Partners Program Agreements, and

(c) constitute expenditures (i) made pursuant to Chapter 380 of the Commission's Rules, and (ii) of a transmission and distribution utility associated with prior conservation efforts within the meaning of 35-A MRSA Section 3211(4), and

(3) the Settlement Agreements, when effective, will not constitute a “modification” of DSM contracts resulting in increased expenditures under such contracts within the meaning of Chapter 624, as codified at 35-A MRS 3211-A (7).

The Parties, except CMP, agree that interest at the rate of five percent (5%) per annum, compounded monthly, should be included in the payment CMP will be required to make under the Cogenex Settlement Agreement to fully compensate Cogenex and its affiliate for the Energy Savings produced by their Bucksport Projects since CMP discontinued payments under the DSM agreements. CMP takes no position with respect to the payment of interest.

**D. Dismissal of Federal Litigation.**

CMP shall expeditiously dismiss the Federal Litigation with prejudice as and when contemplated in the Cogenex Settlement Agreement.

**E. Standard Stipulation Provisions.**

1. Purpose; Rejection of Portion Constitutes Rejection of Whole. The Parties are entering into this Stipulation for the purpose of finally disposing of all issues raised in this Docket. If the Commission does not accept the entire Stipulation without material modification, then the Stipulation shall be null and void, and will not bind the parties in this proceeding.
2. No Precedent. The making of this Stipulation by the parties shall not constitute precedent as to any matter of fact or law, nor, except as expressly provided otherwise herein (such as in Section (C)(3) hereof), nor shall it foreclose any party from making any contention or exercising any right, including the right of appeal, in any other Commission proceeding or investigation, or in any other trial or action.
3. Examiner’s Report. The parties agree to waive the provisions of § 752 (b) of the Commission’s Rules of Practice and Procedure, requiring that any Examiner’s Report be in writing and that the parties be afforded an opportunity to file exceptions or comments thereon. The parties thereby intend to permit the Advisors either to provide an oral Examiner’s Report to the Commission at the deliberative session to be held in this Docket, or, if the Advisors so wish, to provide a written Examiner’s Report to the Commission with the parties waiving the right to file exceptions or comments thereto.

IN WITNESS WHEREOF, the parties have caused this Stipulation to be executed and delivered by their respective attorneys.

Dated: June 21, 2002

COGENEX CORPORATION AND PSEG TECHNOLOGIES

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By:  
Their:

INDIVIDUALS LISTED ON EXHIBIT A

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By:  
Their:

OFFICE OF THE PUBLIC ADVOCATE

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Stephen A. Ward  
Public Advocate

CENTRAL MAINE POWER COMPANY

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By:  
Its:

## **EXHIBIT A**

(List of Complainants in Bradford Snow, et al., MPUC Docket No. 2001-531)

Bradford Snow	Somerville, Maine
Beth A. Nagusky	Litchfield, Maine
Chuck Porter	Kittery, Maine
Carla Dickstein	Wiscasset, Maine
Susan B. Jones	Natural Resources Council of Maine, Augusta, Maine
Denis O'Connor	York, Maine
Pamela Person	Penobscot, Maine
Susan Liebling	Mt. Vernon, Maine
Steve Szotkowski	Monmouth, Maine
Charles H. Van Vlack	Leeds, Maine